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AUG 28 2006

OFFICE OF PETITIONS

In re Application of :
Dera et al. :
Application No. 10/612,352 :
Filed: July 2, 2003 : ON PETITION
Attorney Docket Number: :
A03754 :

This is a decision on the Petition Under 37 CFR 1.8(b), filed October 17, 2005. The petition is properly treated under 37 CFR 1.181(a) to withdraw the holding of abandonment (based upon evidence of compliance with 37 CFR 1.8(b)). The delay in treating this petition is regretted.

The petition is granted.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed January 12, 2005. The Office action set a three (3) month period for reply, and provided for extensions of time under 37 CFR 1.136(a). No reply having been received, the application became abandoned April 13, 2005. A Notice of Abandonment was mailed on October 6, 2005.

Applicant's Assertion

Applicant responds with the instant petition wherein Applicant asserts that a timely reply was filed on April 12, 2005. In support of this assertion, Applicant files a copy of the Response, that includes a certificate of transmission under 37 CFR 1.8 dated April 12, 2005, and what is putatively identified as a Declaration in compliance with 37 CFR 1.8(b) attesting to the mailing of the Response and executed by the same party who executed the Certificate of Mailing on the Response.

Section 1746 of Title 28 of the United States Code provides:

Whenever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required to be supported, evidenced, established, or proved by sworn declaration, verification, certificate, statement, oath or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

[1] If executed without the United States:
"I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.
Executed on (date). (Signature)."

[2] If executed within the United States its territories, possessions, or commonwealths:
"I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)."

(Emphasis supplied.) MPEP 602

Here, the Putative declaration of Yonghong Chen was not executed under penalty of perjury, and is therefore not an acceptable declaration. However, a review of Office records reveals that the Office received Applicant's Response filed on April 12, 2005.

In view of the foregoing, the Notice of Abandonment is hereby vacated and the holding of abandonment is hereby withdrawn.

No fee has been charged for the petition and none is due.

The application file is being referred to Technology Center Art Unit 3724 for processing of the Response in due course.

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-3232.

A handwritten signature in cursive script, appearing to read "Derek L. Woods".

Derek L. Woods
Attorney
Office of Petitions